HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTSICE G. BHAVANI PRASAD

W.P. NO.1622 OF 2006

Between:

M. Seetharamaiah and three others … Petitioners

And

Smt. Nasreen Kulsum Begum, W/o Ardasher
B. Dubaser, rep. by her GPA holder, Sanjar
AliKhan, S/o late Hyder Ali Khan, R/o.
8-2-316/2, Banjara Hills, Hyderabad and
five others … Respondents

:: ORDER ::

Counsel for the petitioners : Sri P.V. Mahesh

Counsel for respondent Nos.1 to 3 : None appeared

Counsel for respondent No.4 : Government Pleader for Revenue

31st JANUARY, 2006

Per G. Bhavani Prasad, J

Aggrieved by the order of the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad in I.A. No.831 of 2005 in L.G.C. No.71 of 1996, dated 28-12-2005, the petitioners have filed this petition.

In L.G.C. No.137 of 1996, L.G.C. Nos.138 of 1996 to 145 of 1996 and L.G.C. No.71 of 1996, the dispute between the parties is about the situation of the land in dispute in part of S.No.129/71 or S.No.129/59 of Shaikpet village. The Deputy Director, Survey and Land Records, was appointed as Commissioner. He filed a common report in all the cases, in which the petitioners filed their objections. The Commissioner was examined as C.W.1 and was cross-examined by the petitioners in L.G.C. No.71 of 1996 and was partly cross-examined in L.G.C. No.137 of 1996. After the matter was adjourned for further cross-examination, the Commissioner expired.

The petitioners filed I.A. No.831 of 2005 in L.G.C. No.71 of 1996 claiming that the Commissioner did not follow the procedure in conducting the survey and had unreasonably and arbitrarily expressed his opinion outside his jurisdiction that the town survey and boundaries referred in the town survey are defective. As testing the Commissioner's report by further cross-examination became

impossible due to his death, a second Commissioner be appointed. The respondents to the petition did not file any counters.

The Bench of the Special Court noted that the Commissioner was extensively cross-examined by the counsel for the petitioners and the petition for appointment of new commissioner had been filed after the evidence on both sides was closed and the matter was posted for arguments. The Bench then observed that an earlier application filed by the petitioners for re-entrustment of warrant to the Commissioner had been rejected and held that there was no valid ground to entertain the request of the petitioner. It was observed that the Commissioner was cross-examined at length by the petitioners' counsel running into 12 full typed sheets and all the defects relied on by the petitioners will be considered if the petitioners satisfy about the truth and validity of the objections at the time of arguments. While noting that both parties were dragging on the matter on one pretext or the other since the commencement of the evidence in 1999, the Bench rejected the contention that the Commissioner was only partly cross-examined. As the evidence was taken in all the batch cases and as the Commissioner was cross-examined at length in L.G.C. No.71 of 1996, the Bench, therefore, was of the considered opinion that there was no necessity to appoint a second Commissioner.

Learned counsel for the petitioners reiterated his client's plea that the Commissioner's report is defective and appointment of a new Commissioner can alone safeguard their interest because the previous Commissioner could not be subjected to full cross-examination. He argued that the reasons assigned by the Special Court for refusing to entertain the prayer for appointment of fresh Commissioner are legally untenable and, therefore, the impugned order is liable to be declared as vitiated by error of law.

We have thoughtfully considered the arguments of the learned counsel but have not felt impressed. A perusal of the record shows that the petitioners have filed land grabbing case for declaring the non-official respondents as land grabbers and their consequential eviction. All the cases filed by them have been clubbed together. They filed applications for appointment of an Officer of the Survey and Land Records Department in the cadre of Deputy Director and above as Commissioner for localization of S.Nos.129/71 and 129/59 of Shaikpet and demarcation of the disputed lands after rejecting the report of the earlier

Commissioner, Sri Madhusudana Rao. It was averred that in view of the defence taken by the respondents that the lands under their occupation are in S.No.129/59 and not in S.No.129/71, the necessity for localization had arisen. While dismissing the applications, the Special Court granted liberty to the petitioners to raise all the issues in the cross-examination of the Commissioner. W.P.No.25766 of 1999 and W.P. No.25760 of 1999 filed against the said orders were disposed of with an observation that in view of the petitioners being permitted to raise all the issues in the cross-examination of the Commissioner, there cannot be any doubt that in the event the learned Tribunal, finding it expedient, having regard to the subsequent events, may have to consider the matter afresh, as by reason of the impugned order no final and conclusive determination of the fact has been arrived at.

The Special court noted that the Commissioner was cross-examined at length by the counsel for the writ petitioners running into 12 full typed sheets, and admittedly the cross-examination of the Commissioner in L.G.C. No.71 of 1996 was completed in all respects. The questions of fact arising in L.G.C. No.71 of 1996 and L.G.C. Nos.138 of 1996 to 145 of 1996 and L.G.C.No.137 of 1996 are common. In fact, the writ petitioners after filing their objections to the Commissioner's report, filed I.A. No.855 of 1999 and I.A. No.911 of 1999 for appointment of a second commissioner for demarcation of the disputed land and fixation of the boundaries of S.No.129/71 and S.No.129/59, which was dismissed by the Special Court by order dated 05-11-1999. The writ petitioners filed W.P. Nos.25766 of 1999 and 25760 of 1999 against that order. A Division Bench of this Court disposed of the writ petitions by order dated
21-3-2001 with the following observations:.

> "It is not in dispute that the subject matter of controversy relates to identity of lands. According to the petitioners herein, the Commissioner, who had been appointed for identification of the lands, committed a palpable mistake and as such it was necessary that a direction for resurvey be made. By reason of the impugned order, the learned Tribunal inter alia directed:
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> > 'In the circumstances, we find no substance in the petition seeking re-entrustment of the survey work to the Commissioner as prayed for and reject the request for such fresh entrustment and report. The report of the Commissioner is not shown to be either defective or unsatisfactory either for re-entrustment of the

warrant to the same Commissioner or for the appointment of a second Commissioner for the same purpose.'

Having regard to the fact that the petitioners have been permitted to raise all the issues in the cross-examination of the Commissioner, there cannot be any doubt that in the event the learned Tribunal finds it expedient, having regard to the subsequent events, may have to consider the matter afresh as by reason of the impugned order no final and conclusive determination of fact has been arrived at."

In our considered view, the ratio of the aforesaid decision is directly attracted in the present case. At the time of final adjudication of the matter, it will be open for the petitioners to show that the Commissioner's report is defective and should not be acted upon. That stage is yet to reach. Therefore, we do not find any reason to interfere with the discretion exercised by the Special Court not to accept the petitioner's prayer for appointment of second Commissioner. Under Order XXVI, Rule 10 of the Code of Civil Procedure, the Court can appoint another Commissioner for the same purpose only if it is not satisfied with the report of the first commissioner and not as a matter of course. In the present case, the petitioners had cross-examined the Commissioner with reference to the proceedings of LGC.No.71 of 1996. Therefore, it is not possible to find any fault with the view taken by the Special Court that there is no warrant for appointment of another Commissioner.

For the reasons mentioned above, the writ petition is dismissed.

G. BHAVANI PRASAD, J

31st January, 2006

G.S. SINGHVI, C.J.

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